IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 6467 of 2001 (S/S)
(Old No. 3823 of 1996)

State of U.P. and others ……petitioners

Versus

Jagmohan Singh and another …….Respondents

Date of decision: 16, September 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

WRIT PETITION NO. 6467 (S/S) 2001

1. State of U.P. through the Secretary, Food and Supply Ministry, .P. Lucknow.
2. The Commissioner, Food and Civil Supplies, U.P. Lucknow.
3. The District Magistrate, Almora.
4. The District Supply Officer, Almora.

… Petitioners.

Versus

1. Jag Mohan Singh Rawat.
2. U.P. State Public Services Tribunal.

… Respondents

Sri Subhash Upadhayaya, Brief holder/Standing Counsel.
Sri S.N. Babulkar, Senior Advocate with Sri Tumul Nainwal and Sri Anil Bisht, Advocates for respondents.

HON'BLE P.C. PANT, J.

1. By means of this writ petition, moved under Article 226 of Constitution of India, the award dated 25.09.1995 passed by the respondent No. 2, has been sought to be quashed. Also, a mandamus commanding that the impugned order be not given effect to, has been prayed.

2. Brief facts of the case as narrated in the writ petition are that the respondent No.1 was appointed initially as temporary typist cum clerk in the office of the District Supply Officer, Almora. He being temporary government servant, his services were terminated vide order dated 18.06.1975 under Temporary Government Servants (Termination of Services) Rules, 1975. Aggrieved by the termination order, respondent No.1 preferred a claim petition before U.P. Public Services Tribunal (respondent no.2) challenging the order of termination on the ground that neither one month's notice nor one month's salary was paid to him. However, the claim petition was highly belated by more than 10 years. The petitioners contested the said petition before the Tribunal. The Tribunal, after hearing the parties, quashed the

termination order and also the order of rejection of the representation made by respondent No.1 against termination. Now, the petitioners, i.e. State of U.P. and others, have challenged the impugned award dated 25.09.1995 by which the termination order was quashed as aforesaid. The ground, inter alia, on which the impugned order is challenged, contains that the claim petition was barred by time. It is also alleged that services of the respondent No.1, being temporary were liable to termination under the U.P. Temporary Government Servants (Termination of Services) Rules, 1975, as such, the respondent No.2 has committed manifest error of law by quashing the order of termination.

3. A Counter affidavit has been filed on behalf of respondent No.1 in which it has been admitted that the answering respondent was appointed as typist cum clerk in the office of District Supply Officer with effect from 23.04.1973 and his services were terminated vide order dated 18.06.1975 (Annexure 2 to the writ petition). However, it is alleged in the counter affidavit that the order of termination was arbitrary and illegal. It is further stated that the impugned award suffers from no illegality as the claim petition before the Tribunal was well within time from the date of rejection of the representation by the State.

4. I heard learned counsel or the parties and perused the affidavit, counter affidavit and rejoinder affidavit alongwith Annexures annexed thereto.

5. The short question for consideration before this court is that whether the impugned awarded dated 25.09.1995 is against the law and liable to be quashed.

6. Before further discussion in the matter in issue, it is pertinent to mention the background of termination from services. From the perusal of copy of bail application moved by Respondent No.1 (copy annexure III to writ petition) before Sessions Judge, Almora and copy of rejoinder affidavit (annexure V to the writ petition) filed by the Respondent No.1 before the

U.P. Public Services Tribunal (para 8), shows that the Respondent No.1 was arrested on a charge of offence under Section 420/468 I.P.C. and under Section 3/7 Essential Commodities Act and remained in Jail since 07.06.1975 to 14.06.1975 but it appears that no chargesheet was filed later.

7. Admittedly the petitioner was employed as temporary typist cum clerk in the office of the District Supply Officer, Almora in the year 1973. It is also admitted that his services were terminated vide order dated 18.06.1975 (copy Annexure 2) under Temporary Government Servants (Termination of Services) Rules, 1975. Learned counsel for the petitioners conceded that while passing said order neither the respondent No.1 was given one month's notice nor paid one month's salary in lieu thereof. Copy of said order (Annexure 2) also shows that it is silent on that point. The learned Vice Chairman, U.P. Public Services Tribunal, Lucknow has quashed the order of termination of services passed against the respondent No.1 as illegal on the ground that the provisions of U.P. Temporary Government Servants (Termination of Services) Rules, 1975 not complied with as neither notice was given or nor the one month's salary in lieu of the notice. Since petitioners have no where stated that in their petition if they had paid either one month's salary or one month's notice. In these circumstances, in the opinion of this court, the direction in the impugned order regarding quashing of termination order dated 18.06.1975 can not be said to be either illegal or against the law.

8. Learned counsel for the petitioners mainly challenged the impugned award on the ground that the claim petition before the U.P. Public Services Tribunal (respondent No.2) was time barred and not maintainable. From perusal of record it is clear that from the date of the order of termination, the claim petition was definitely filed after a period of about more than 10 years. but this court can not ignore the fact that while dismissing the writ petition No. 2637 of 1984 filed by the Respondent No. 1 before Allahabad High Court, the said Court vide order dated 26.02.1985 made the observation as under:

"The petitioner challenges the legality of an order dated June 18,1975 whereby his services were terminated. More than 10 years have elapsed. Apart from the fact that the petitioner could approach U.P. Public Services Tribunal. This is a case where we feel that the petitioner is guilty of latches in coming to this court at this stage. The petitioner avers that his last representation was dismissed by the State Government some time in the year 1982, the petitioner may, if so advised, even now approach the U.P. Public Services Tribunal if the petitioner prefers the petition before the Public Services Tribunal, we are sure, it shall be dealt on merits in accordance with law.

The petition is dismissed summarily

26.2.1985 *Sd/- SKD*
Sd/- SKM

In view of aforesaid order, in the opinion of this court, the U.P. Public Services Tribunal has committed no error of law by entertaining the claim petition of the respondent No.1 at a belated stage from the date of termination. That being so, the impugned award can not be said to be liable to be quashed on that ground.

9. However, the direction that "the entire arrear of pay should be paid to the petitioner" contained in the impugned award can not be said to be in consonance with the settled principle of law that the period for which the employee has done no work and particularly the period for which he did not work for no fault of the employer, does not entitle him to full wages all throughout. In Ram Ashre Singh Vs Ram Bux Singh, 2003 Labour and Industrial Cases 1210 Hon'ble the Supreme Court has held that "when fixing back wages several factors need to be noted. It is well settled position in law that on reinstatement there is no automatic entitlement to full back wages". Also, that in Hindustan Motors Vs Tapan Kumar Bhattacharya, A.I.R. 2002 (Supreme Court) 2676 the Apex Court has earlier also held that relief of full back wages does not follow as a matter of course. Similarly, in M. P. State Electricity Board Vs Jarina Bee, 2003

A.I.R. (SCW) 3380 it is again reiterated that full back wages are not natural consequence of setting aside of order of removal. As such, in the opinion of this court since delay of 10 years from the date of termination was due to the conduct on the part of the respondent No.1, as such, he can not be said to be entitled to full salary for that period without doing any work. No doubt, he is rightly held by the Tribunal to be treated in service as the order of termination was quashed but as to the entitlement of salary the State can not be burdened for full salary for the period of said 10 years.

10. In view of the above discussion while this court finds no error of law in the impugned award in quashing the order of termination passed against the respondent No.1, the direction as to the payment of salary for the entire period contained in the impugned award can not be sustained. Accordingly the writ petition is partly allowed and impugned order is quashed and modified only to the extent that the respondent No.1 shall be paid only 50% of the wages for the period of 10 years from the date 18.06.1975. He is already reinstated in service and shall be treated to be continuously in service. He shall be entitled to full wages after the period of said 10 years. For rest of the reliefs the writ petition is dismissed. No order as to costs.

(P.C.Pant, J)

Dated: September 16,2004.
S.S. Negi